

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF THE STATEMENT OF CHARGES AGAINST

RICHARD M. FLEMING, M.D., RESPONDENT

File No. 02-09-283

AGREEMENT NOT TO PRACTICE MEDICINE

COMES NOW the Iowa Board of Medicine (Board) and Richard M. Fleming, M.D. (Respondent) on October 22, 2010, and pursuant to Iowa Code sections 17A.10 and 272C.3(4), enter into this Agreement Not to Practice Medicine.

1. Respondent was issued Iowa medical license no. 26135 on July 1, 1987.
2. Respondent's Iowa medical license is active and will next expire on February 1, 2012.
3. The Board has jurisdiction in this matter pursuant to Iowa Code chapters 147, 148 and 272C.
4. Respondent is an Iowa-licensed physician who specializes in internal medicine and cardiovascular disease from Reno, Nevada.
5. On January 18, 2007, Respondent was indicted in the United States District Court for the District of Nebraska on ten (10) counts of health care fraud, two (2) counts of wire fraud and one (1) count of mail fraud.

6. On August 21, 2009, Respondent pleaded guilty to one (1) count of health care fraud and one (1) count of mail fraud. All other counts of the Indictment were dismissed as part of his guilty plea. Under the terms of the plea agreement, Respondent was placed on probation for a period of five (5) years, placed under home confinement under electronic monitoring for a period of six (6) months, ordered to complete 150 hours of community service and ordered to pay \$107,244.24 in restitution. Effective May 11, 2009, Respondent was also permanently excluded from participation in Medicare, Medicaid and all other Federal health care programs.

7. On February 4, 2010, the Board filed formal disciplinary charges against Respondent based on the criminal charges in Nebraska.

8. Respondent is currently litigating a Habeas Corpus claim of actual innocence.

9. Respondent is not currently practicing medicine.

10. Respondent has requested that the Board delay prosecution of the pending disciplinary charges pending the outcome of his appeal of the guilty plea to the criminal charges if he agrees not to practice medicine until the disciplinary charges in this matter have been resolved.

AGREEMENT NOT TO PRACTICE MEDICINE

11. Respondent hereby agrees that he shall not engage in the practice of medicine under Iowa license until the pending disciplinary charges in this matter have been resolved.

12. Respondent acknowledges that this Agreement is a public record.

13. Respondent voluntarily submits this Agreement to the Board for consideration.

14. In the event Respondent violates or fails to comply with any of the terms of this Agreement, the Board may initiate action to suspend or revoke Respondent's Iowa medical license or to impose other license discipline authorized in Iowa Code Chapters 148 and 272 and 653 IAC 12.2.

15. This Order is subject to approval by the Board. If the Board fails to approve this Order, it shall be of no force or effect to either party.

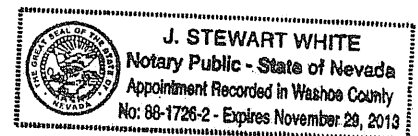
16. The Board's approval of this Order shall constitute a **Final Order** of the Board.

Richard M. Fleming, M.D.
Richard M. Fleming, M.D., Respondent

7 October 2010
Date

Date Subscribed and sworn to before me on October 7, 2010.

Notary Public, State of Nevada J. Stewart White



This Order is approved by the Board on October 22, 2010.

Siroos S. Shirazi
Siroos S. Shirazi, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, IA 50309-4686

BEFORE THE IOWA BOARD OF MEDICINE

IN THE MATTER OF STATEMENT OF CHARGES AGAINST

RICHARD M. FLEMING, M.D., RESPONDENT

File No. 02-09-283

STATEMENT OF CHARGES

COMES NOW the Iowa Board of Medicine (Board) on February 4, 2010, and files this Statement of Charges pursuant to Iowa Code Section 17A.12(2). Respondent was issued Iowa medical license no. 26135 on July 1, 1987. Respondent's license is active and will next expire on February 1, 2010.

A. TIME, PLACE AND NATURE OF HEARING

1. Hearing. A disciplinary contested case hearing shall be held on April 29, 2010, before the Iowa Board of Medicine. The hearing shall begin at 8:30 a.m. and shall be located in the conference room at the Iowa Board of Medicine office at 400 SW 8th Street, Suite C, Des Moines, Iowa.

2. Answer. Within twenty (20) days of the date you are served this Notice of Hearing you are required by 653 Iowa Administrative Code 25.10 to file an Answer. In that Answer, you should also state whether you will require a continuance of the date and time of the hearing.

3. Presiding Officer. The Board shall serve as presiding officer, but the Board may request an Administrative Law Judge make initial rulings on prehearing matters, and be present to assist and advise the board at hearing.

4. Prehearing Conference. A prehearing conference will be held by telephone on March 4, 2010, at 10:30 a.m., before an Administrative Law Judge from the Iowa Department of Inspections and Appeals (ALJ). Please contact Kent M. Nebel, J.D., Legal Director, Iowa Board of Medicine, at 515-281-7088 with the telephone number at which you or your legal counsel can be reached. Board rules on prehearing conferences may be found at 653 IAC 25.15.

5. Hearing Procedures. The procedural rules governing the conduct of the hearing are found at 653 Iowa Administrative Code Chapter 25. At hearing, you will be allowed the opportunity to respond to the charges against you, to produce evidence on your behalf, cross-examine witnesses, and examine any documents introduced at hearing. You may appear personally or be represented by counsel at your own expense. If you need to request an alternative time or date for hearing, you must review the requirements in 653 Iowa Administrative Code 25.16. The hearing may be open to the public or closed to the public at the discretion of the Respondent.

6. Prosecution. The office of the Attorney General is responsible for representing the public interest (the State) in this proceeding. Pleadings shall be filed with the Board and copies should be provided to counsel for the State at the following address: Theresa O'Connell Weeg, Assistant Attorney General, Iowa Attorney General's Office, 2nd Floor, Hoover State Office Building, Des Moines, Iowa 50319.

7. Communications. You may not contact board members by phone, letter, facsimile, e-mail, or in person about this Notice of Hearing. Board members may only receive information about the case when all parties have notice and an opportunity to participate, such as at the hearing or in pleadings you file with the Board office and serve upon all parties in the case. You may contact Kent M. Nebel, J.D., Legal Director, at 515-281-7088 or to Assistant Attorney General Theresa O'Connell Weeg at 515-281-6858.

B. LEGAL AUTHORITY AND JURISDICTION

8. Jurisdiction. The Board has jurisdiction in this matter pursuant to Iowa Code Chapters 17A, 147, 148, and 272C (2005).

9. Legal Authority: If any of the allegations against you are founded, the Board has authority to take disciplinary action against you under Iowa Code Chapters 17A, 147, 148, and 272C (2005) and 653 Iowa Administrative Code Chapter 25.25.

10. Default. If you fail to appear at the hearing, the Board may enter a default decision or proceed with the hearing and render a decision in your absence, in accordance with Iowa Code Section 17A.12(3) and 653 Iowa Administrative Code 25.20.

C. SECTIONS OF STATUTES AND RULES INVOLVED

COUNT I

11. Respondent is charged pursuant to Iowa Code section 147.55(5) and 272C.5 with being convicted of a felony related to the profession of the licensee or the conviction of any felony that would affect the licensee's ability to practice within a profession.

COUNT II

12. Respondent is charged pursuant to Iowa Code section 148.6(2)(b) and 653 IAC 23.1(10) for violating a statute or law of this state, another state or the United States without regard to its designation as a felony or misdemeanor, which statute or law relates to the practice of medicine.

COUNT III

13. Respondent is charged pursuant to Iowa Code section 148.6(2)(c) and 653 IAC 23.1(9) for being convicted of a felony in the courts of this state or another state, territory, or country.

COUNT IV

14. Respondent is charged pursuant to Iowa Code sections 147.55(3) and 272C.10(3), and 653 IAC sections 23.1(3) and (4), with engaging in unethical or unprofessional conduct and/or practice harmful or detrimental to the public. Engaging in unethical or unprofessional conduct includes, but is not limited to, the committing by a licensee of an act contrary to honesty, justice or good morals, whether the same is committed in the course of the licensee's practice or otherwise and whether committed within this state or elsewhere.

D. STATEMENT OF MATTERS ASSERTED

15. Respondent is an Iowa-licensed physician who specializes in internal medicine and cardiovascular disease from Reno, Nevada.

16. On January 18, 2007, Respondent was indicted in the United States District Court for the District of Nebraska on ten (10) counts of health care fraud, two (2) counts of wire fraud and one (1) count of mail fraud:

Counts 1-10 - Health Care Fraud: The Indictment alleges that Respondent committed health care fraud when he submitted false or fraudulent claims for services to Medicare, Medicaid and Blue Cross Blue Shield of Nebraska between January 24, 2002, and October 9, 2002. Respondent allegedly submitted claims for tomographic myocardial perfusion imaging studies that he knew contained materially false representations. The number and type of tomographic studies had not been provided as claimed.

Counts 11-12 – Wire Fraud: The Indictment alleges that Respondent committed wire fraud when he knowingly and willfully attempted to obtain money by means of material false and fraudulent pretenses and representations between January 29, 2004 and March 8, 2004. Respondent allegedly submitted false data via e-mail while conducting a clinical study on the health benefits of a soy chip food product for which he received compensation.

Count 13 – Mail Fraud: The Indictment alleges that Respondent committed mail fraud when he knowingly and willfully attempted to obtain money by means of material false and fraudulent pretenses and representations on March 8, 2004. The indictment alleges that Respondent submitted false data via a commercial interstate carrier while conducting a clinical study on the health benefits of a soy chip food product for which he received compensation.

17. On August 21, 2009, Respondent pleaded guilty to one (1) count of health care fraud and one (1) count of mail fraud. All other counts of the Indictment were dismissed as part of his guilty plea. Under the terms of the plea agreement, Respondent was placed on probation for a period of five (5) years, placed under home confinement under electronic monitoring for a period of six (6) months, ordered to complete 150 hours of community service and ordered to pay \$107,244.24 in restitution. Effective May 11, 2009, Respondent was also permanently excluded from participation in Medicare, Medicaid and all other Federal health care programs.

E. SETTLEMENT

18. Settlement. This matter may be resolved by settlement agreement. The procedural rules governing the Board's settlement process are found at 653 Iowa Administrative Code 12.25. If you are interested in pursuing settlement of this matter, please contact Kent M. Nebel, J.D., Legal Director at 515-281-7088.

F. PROBABLE CAUSE FINDING

19. On this 4th day of February, 2010, the Iowa Board of Medicine found probable cause to file this Statement of Charges.



Siroos S. Shirazi, M.D., Chairman
Iowa Board of Medicine
400 SW 8th Street, Suite C
Des Moines, Iowa 50309-4686